IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11064 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BIPINCHANDRA GAMANLAL CHOKSHI

Versus

COMPETENT AUTHORITY UNDER SAFEMA

Appearance:

1. Special Civil Application No. 11064 of 2001

MR RS SANJANWALA for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

MRS HB PUNANI for Respondent No. 2-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/04/2002

ORAL JUDGEMENT

It appears that the present petitioners against whom show-cause notice under Sec.6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (`SAFEMA' for short) has been issued by the

authority has straightaway rushed to this Court instead of replying to the said show-cause notice. The petitioners have also challenged the detention order. The respondents have filed detailed reply.

2. When this matter has come up for hearing, learned counsel for the respective parties more particularly learned Senior Central Govt. Standing Counsel has drawn my attention towards the above aspect of the matter.

3. In view of the above, learned counsel for the petitioners, Mr.R.S.Sanjanwalla, seeks permission to withdraw the petition with a liberty to approach the authority who has issued show-cause notice under Sec.6 of the SAFEMA within one month from the date of this order and with a request that petitioners may be permitted to raise all contentions there before the said authority including the preliminary point which they have raised in this petition. He has also requested that if these contentions are not considered by the authority, then they may be permitted to raise the same again before this Court. He has also sought liberty to challenge the order of detention on the same grounds or such other grounds as are available. He has prayed for stay of the operation of the order also.

4. Permission is granted as prayer for. Liberty to approach the authority within one month from the date of this order. However, request for stay cannot be accepted as the order that may be passed by the authority against the petitioner will be an appealable order and there is a provision under Sec.12(4) of SAFEMA to file appeal within 45 days before the Appellate Tribunal. Under the circumstances, even if the order that may be passed by the authority against the petitioner is not stayed, petitioner is not prejudiced as he is protected under the Act for a period of 45 days and, therefore, protecting the petitioners now at this stage does not arise. The request is, therefore, rejected. This petition stands disposed of as withdrawn with permission and liberty as aforesaid reserved with no order as to costs. Rule is discharged.

(R.P.DHOLAKIA,J.)

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